

Eighty-Seventh Regular Session

TUESDAY, December 30, 1986

The chief clerk makes the following entries under the above date.

Winnebago Co.

76.50

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

December 18, 1986

To the Honorable the Senate

Enclosed is the report of the State Claims Board covering claims heard on December 10, 1986.

The amounts recommended for payment under \$1000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$1,000, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,
EDWARD D. MAIN
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin on December 10, 1986, upon the following claims:

Claimant	Amount
Judy McLean	\$ 1,373.40
Charles Forsmo	44.00
Thomas Seidl	528.00
Earl Olson, Jr.	6,597.22
Laurie Lee Wolf	368,743.55
Dennis Hallingstad	250,000.00

In addition, the following claims were considered and decided without hearings:

Thomas Berens	\$ 41.92
Nancy Habermann	105.00
Dr. William Grover Estate	2,928.83
J.C. Smith	730.49
Nancy Kwak	42.24
Terry Wiley	42.24
Thomas Bahti	18.00
Scott & Judith Krueger	1,190.60
Thomas Hoffmann	240.21
Daniel Farrar	52.45
R-Way Furniture Co.	642.03
Mary Knoebel	131.25
Robert Wallis, Sr.	65.30
Richard Ingman	470.14

THE BOARD FINDS:

1. Judy McLean of Madison claims \$1,373.40 for orthodontia treatment for her two children from 1982 to 1984. Claimant alleges that her employer, the Department of Employee Trust Funds, failed to advise her of the availability of catastrophic insurance when she began employment with the Department in November, 1975. The catastrophic insurance program is not administered by the Department of Employee Trust Funds. In 1974, the Department of Employee Trust Funds discontinued offering catastrophic insurance to employees because the insurance company, Central National Life, required someone in the Department to act as agent for the program. The Department of Employee Trust Funds did not sign a contract with the Insurance Company and directed Department personnel not to function as agent for the program. In November, 1983, the Department of Employee Trust Funds signed a contract with John Deere Insurance Company and at that time began offering the optional Catastrophic Insurance Program to all new employees. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

2. Charles Forsmo of Monona claims \$44.00 for replacement of his clothing which was damaged on August 5, 1986 by chemicals from a processor machine at the Department of Administration WISCOMP Center where he is employed. The damage occurred while claimant was correcting a problem with the machine in the absence of a regular operator. Claimant was wearing a protective apron when the incident occurred. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Department of Administration appropriation s. 20.505(1)(kd), Stats.

3. Thomas Seidl of LaCrosse claims 50% of his college tuition for the academic years 1985-86 and 1986-87, due to misinformation provided by a Wisconsin National Guard recruiter in 1985. The recruiter incorrectly advised claimant that he was entitled to receive tuition assistance for additional education and extended enlistment in the National Guard. Claimant relied on the information provided by the recruiter in deciding to extend his obligation. The Board concludes the claim should be paid in the amount of \$528.00, for his 1985-86 college tuition, based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Department of Military Affairs appropriation s. 20.465(2)(a), Stats.

4. Earl B. Olson, Jr. of Madison claims \$6,597.22 for financial losses allegedly caused by the University of

JOURNAL OF THE SENATE

Wisconsin for withholding social security from his paychecks from 1977 to 1982. From September 1, 1977 through August 31, 1982, claimant received a Research Career Development Grant from the National Institute of Health while he was employed by the University of Wisconsin-Madison as an Assistant Professor. In 1981 claimant advised the University of Wisconsin that his grant should not be considered as wages for social security taxes and requested a refund of the social security withheld from his wages by the University of Wisconsin. On March 26, 1985, Administrative Law Judge Ronald B. Safren issued a decision that payments received by claimant from the Research Career Development award are excludable from wages for social security purposes. In June, 1986, the University of Wisconsin-Madison reimbursed claimant \$7,678.12 for the social security taxes withheld from his wages. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

5. Laurie Lee Wolf of Ann Arbor, Michigan, claims \$368,743.55 for compensation of damages resulting from an automobile accident with an uninsured motorist. On April 22, 1980, while employed by the University of Wisconsin, claimant was injured when the state-owned vehicle she was driving was struck by a semi-trailer truck in Dodge County. Claimant brought suit against the driver of the truck, the trucking company and its insurance company. On November 16, 1984, a Dodge County jury returned a verdict in favor of claimant and on January 4, 1985, a judgment was entered against the defendants in the combined amount of \$319,032.43. On April 23, 1986, claimant's attorney was informed that the defendant insurance company had gone into liquidation making the truck driver and trucking company uninsured motorists. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

6. Dennis Hallingstad of LaCrosse claims \$250,000.00 as compensation for defamation, loss of family, loss of business, loss of personal freedoms, mental anguish, abuse, threats and intimidation, and being committed to mental institutions without probable cause allegedly relating to the actions of Reserve Judge Richard G. Harvey, Jr. who presided over claimant's divorce action in 1983. Claimant contends the actions taken by Reserve Judge Harvey while presiding over his case were unlawful and invalid because he had not filed an oath of office prior to assuming his duties as reserve judge. The Board finds that any acts taken by Reserve Judge Harvey were valid as the acts of a *de facto* officer. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents, or employes and this claim is not one for which

the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Thomas Berens of Portage claims \$41.92 for replacement of two pair of trousers which were damaged by a spring that poked through his office chair at the Department of Industry, Labor and Human Relations, Job Service Division on July 10 and July 15, 1986. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment should be made from the Department of Industry, Labor and Human Relations appropriation s. 20.445(1)(n), Stats.

8. Nancy Habermann of Wauwatosa claims \$105.00 for replacement of her watch allegedly lost while she was performing his job duties as an employe of the Wisconsin State Fair Park on August 6, 1986. Claimant was loading boxes of flowers into a car when the latch on her watch apparently caught on one of the boxes and fell off. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the State Fair Park appropriation s. 20.115(5)(h), Stats.

9. Patricia J. Stuff of Bonduel claims \$2,928.83 for overpayment of inheritance taxes, plus interest, in the Estate of Dr. William Grover. In January, 1981, claimant, as beneficiary received her deceased husband's Keogh plan benefits in the amount of \$47,427.81. The Keogh Plan benefits were incorrectly added in the federal gross estate and no mention was made of the rollover of the benefits by claimant. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. J.C. Smith of Oshkosh claims \$730.00 for damages to his vehicle caused by driving over a curb which completely surrounded a parking lot on the University of Wisconsin-Oshkosh campus. On March 27, 1986, as claimant drove his vehicle over the curb, the left rear shock absorber broke through the spring carrier housing. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Nancy Kwak of Madison claims \$42.24 as the cost of cleaning her vehicle when it became covered with tar and oil on August 25, 1986, while it was parked in lot 58 on the University of Wisconsin-Madison campus. Claimant was instructed not to park in lot 58 during the week of August 18 through 22, 1986 because the area was being resurfaced. On August 25, 1986, claimant parked her vehicle in lot 58. The resurfacing work continued on that date but claimant was not asked to move her car and there were no barriers or other indications that parking was not allowed in the lot on August 25. The Board concludes the claim should be paid based on equitable

principles. The Board further concludes, under s. 16.007(6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(1)(a), Stats.

12. Terry Wiley of Waunakee claims \$42.24 as the cost of cleaning his vehicle when it became covered with tar and oil on August 25, 1986, while it was parked in lot 58 on the University of Wisconsin-Madison campus. Claimant was instructed not to park in lot 58 during the week of August 18 through 22, 1986 because the area was being resurfaced. On August 25, 1986, claimant parked his vehicle in lot 58. The resurfacing work continued on that date but claimant was not asked to move his car and there were no barriers or other indications that parking was not allowed in the lot on August 25. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(1)(a), Stats.

13. Thomas Bahti of Green Bay claims \$18.00 for veterinary expenses incurred when his dog was bitten by a muskrat on August 29, 1986. Claimant is employed by the Department of Natural Resources as a Wildlife Manager and was using his dog to retrieve sick and dead waterfowl on behalf of the Department when the incident occurred. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

14. Scott and Judith Krueger of Saukville claim \$1,190.60 for expenses incurred in connection with a contract to purchase real estate from the Department of Natural Resources in January, 1986. Claimants' offer to purchase was accepted by the Department of Natural Resources with the understanding that the structures on the property meet local zoning and sanitary requirements. Subsequent investigation indicated that the sanitary system of the property is nonconforming. The Department and claimant mutually agreed to terminate the sale and the property was not conveyed to claimants. The Board concludes the claim should be paid in the reduced amount of \$1,000.00, based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

15. Thomas Hoffmann of Cedar Rapids, Iowa, claims \$240.21 for replacement of his car windshield allegedly broken by a golf ball while the vehicle was parked in the lot at the Peninsula State Park golf course on July 28, 1986. Section 895.52, Stats., limits liability for damages resulting from the use of state-owned recreational facilities under these circumstances in the absence of a showing of a malicious act or malicious failure to warn of a known unsafe condition. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is

legally liable nor one which the state should assume and pay based on equitable principles.

16. Daniel Farrar of Baraboo claims \$52.45 for replacement of his eyeglass frames damaged on December 21, 1985, while he was tracking a cross county ski trail at Mirror Lake State Park where he is employed as an Assistant Superintendent. The eyeglass frames were broken by a shovel claimant was using to dig out a snowmobile which had become stuck in the snow. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

17. R-Way Furniture Company of Sheboygan claims \$642.03 for service charges on late payments by the Department of Health and Social Services under a contract to purchase chairs from claimant in 1985. Under the terms of the contract, claimant assessed 1.5% per month service charges for nonpayment after 30 days. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Department of Health and Social Services appropriation 20.435(2)(gk), Stats.

18. Mary Knoebel of Union Grove claims \$131.25 for repairs to her ring allegedly necessitated by an accident on April 21, 1986, at the Southern Wisconsin Center where she is employed. The damage occurred when claimant slipped and fell on some stripping solution on the floor and hit her ring on the floor. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Department of Health and Social Services appropriation 20.435(2)(gk), Stats.

19. Robert Wallis, Sr. of Tomahawk claims \$65.30 for replacement of a jacket allegedly stolen by students on escape status from the Lincoln Hills School in May, 1986. The Board concludes the claim should be paid in the reduced amount of \$62.30, based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Department of Health and Social Services appropriation s. 20.435(3)(hm), Stats.

20. Richard Ingman of Tomahawk claims \$470.14 for uninsured damages to his automobile allegedly caused by students on escape status from the Lincoln Hills School on May 12, 1986. The Board concludes the claim should be paid in the reduced amount of \$62.30, based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Department of Health and Social Services appropriation s. 20.435(3)(hm), Stats.

21. Winnebago County claims \$76.50 for uninsured damages to its squad car caused by a resident on escape status from the Winnebago Mental Health Institute on September 10, 1986. The resident eloped from the Institute during "on grounds activities". The

JOURNAL OF THE SENATE

Winnebago County Sheriff's Department was contacted for assistance in returning the resident to the institution. The resident did the damage to the County's squad car during her return to the Institution. The Board concludes the claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

1. The claims of the following claimants should be denied:

- Judy McLean
- Earl Olson, Jr.
- Laurie Lee Wolf
- Dennis Hallingstad
- Dr. William Grove Estate
- J.C. Smith
- Thomas Hoffman
- Winnebago County

2. Payment of the following amounts to the following claimants is justified under s. 16.007, Stats.:

Thomas Seidl	\$ 528.00
Charles Forsmo	44.00
Thomas Berens	41.92
Nancy Habermann	105.00
Nancy Kwak	42.24
Terry Wiley	42.24
Thomas Bahti	18.00
Scott & Judith Krueger	1,000.00.
Daniel Farrar	52.45
R-Way Furniture Co.	642.03
Mary Knoebel	131.25
Robert Wallis, Sr.	62.30
Richard Ingman	470.14

Dated at Madison, Wisconsin, this 17th day of December, 1986.

- GARY R. GEORGE
Senate Finance Committee
- MARLIN D. SCHNEIDER
Assembly Finance Committee
- JUAN B. COLAS
Representative of Governor
- EDWARD D. MAIN
Representative of Secretary of Administration
- WILLIAM H. WILKER
Representative of Attorney General

State of Wisconsin
Wisconsin Housing and
Economic Development Authority
December 30, 1986

To the Honorable the Legislature

I am pleased to transmit to you the following report:
CREDIT RELIEF OUTREACH PROGRAM
MONTHLY REPORT

I would appreciate your including this letter in the Journal for the information of the membership. Additional copies of this report are available upon request from the Wisconsin Housing and Economic Development Authority (WHEDA), 1 South Pinckney, Suite 500, or by calling (608) 266-7884.

Best Wishes,
ED JACKAMONIS
Executive Director

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor

December 22, 1986

To the Honorable, the Senate:

I am submitting to you the 1986-87 plan for the use of surplus reserves in the Wisconsin Housing and Economic Development Authority. The plan includes revisions that I have made to increase the amounts available for direct grants.

During the last year applications for WHEDA grants have totaled four times the \$1.2 million set aside for that purpose in the 85-86 surplus plan. As a result, many deserving applications had to be turned down. Therefore, I have transferred an additional \$300,000 from Plan Category I, Short and Long Term Investments, Bond Supported Programs, to plan Category 4, Grants and Services. Specifically I have reduced HOME Program Long Term expenditures from \$6 million to \$5.7 million and added that amount to Housing grants. A revised summary of the surplus plan is attached.

This change in the plan was accomplished after consultation with Senator Lee and Representative Mark Lewis, the chairs of the standing committees with jurisdiction over WHEDA. I believe the new plan leaves the HOME program intact while adding to the pool of grant funds available for deserving housing projects.

I hope you will agree with these changes and advance the plan through the remainder of the review process. Please contact me if you have any questions or concerns.

Respectfully,
ANTHONY S. EARL
Governor

Referred to committee on Urban Affairs, Utilities and Elections.

SENATE CLEARINGHOUSE ORDERS

The committee on Labor, Business, Veterans Affairs and Insurance reports and recommends:

Clearinghouse Rule 85-174

AN ORDER to repeal ILHR 82.11 (43), (71), (74), (120) and (177) to (184), 82.30 (9) (c) 4 and 82.31 (13) (a) 2; to renumber and amend ILHR 82.30 (9) (c) 5; to amend ILHR 52.60 (3) (a) and (5) (b), 81.13 (3) (a) 1 and 2, 82.11 (56) and (163), 82.31 (11) (a), 82.32 (4) and 82.35 (3) (i);

JOURNAL OF THE SENATE

to repeal and recreate ILHR 21.17 (4), 81.12, 82.11 (53), (68) and (115), 82.21 (1) (d) 5 and 7 (intro.), 82.30 (4) (d) 2, (11) (intro.) and (f) 2, 82.33 (9) (g) 5, 82.35 (3) (j), 82.36 (3) (a), (b) 1 and (c) 1, 82.40, 82.60, A-82.20 and A-82.21; and to create ILHR 52.60 (6), 81.01 (11m) and (17m), 81.125, 81.126, 81.17, 82.11 (67m), (159m) and (177) to (180), 82.33 (9) (g) 6, 82.36 (3) (c) 3 and A-82.40 (7) (a) and (b), relating to plumbing.

Submitted by Department of Industry, Labor & Human Relations.

No action taken.

Clearinghouse Rule 85-187

AN ORDER to repeal and recreate chapter ILHR 84; and to create ILHR 82.11 (55m) and (181) and Ind 69.23 (5), relating to the state uniform plumbing code and fees.

Submitted by Department of Industry, Labor & Human Relations.

Objection recommended:

Ayes, 4 -- Senators Van Sistine, Roshell, Otte and Plewa;

Noes, 2 -- Senators Kreul and Leean.

Clearinghouse Rule 86-153

AN ORDER to renumber ILHR 7.04 (1); and to create ILHR 7.04 (1), (8m), (10m), (19h), (19r), (27m), (28m) and (32), subchapter VII of chapter ILHR 7 and ILHR 7.37 (3) (p) and (q), relating to blasting resultants.

Submitted by Department of Industry, Labor & Human Relations.

Review period waived.

Ayes, 4 -- Senators Van Sistine, Roshell, Otte and Kreul;

Noes, 0 -- None.

JEROME VAN SISTINE
Chair